



U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

**MEMO ENDORSED**

April 26, 2019

By ECF

Hon. Valerie E. Caproni  
United States District Judge  
United States Courthouse  
40 Foley Square  
New York, NY 10007

USDC SDNY  
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Re: *Joshua Cleveland v. Long Island Railroad Co.*, 18-cv-2080-VEC

Dear Judge Caproni:

I write respectfully in connection with the Court's Order dated March 19, 2019 (ECF No. 31), which alerted the United States and the State of New York that a specified statutory issue is being litigated in the above-referenced case, and which "invite[d] the United States and the State of New York to submit their views on this question" in briefs to be filed "no later than April 30, 2019."

The Department of Labor is the federal agency with relevant expertise. This Office and the Labor Department consulted about the matter promptly upon receipt of the Court's order. Following an internal review process, the Labor Department this week requested the Justice Department to make a submission in response to the Court's Order. I am informed, however, that any such submission must be made by a component of the Justice Department under the authority of 28 U.S.C. § 517, and that such submissions in cases where the United States is not a party require authorization by the Assistant Attorney General in charge of the Civil Division. I further have been advised that the review process leading to such an approval, which involves a series of interim Justice Department reviews, requires up to three weeks to complete.

This Office therefore regrettably will be unable to make the submission invited by the Court by the date that the Order specified. We are pursuing Justice Department approval as quickly as possible, and anticipate that we will be able to make such a submission, if authorized, by May 21, 2019, which is three weeks after the date specified by the Court. We leave it to the Court whether it is acceptable to defer ruling until submission of a Statement of Interest by the United States. Of course, if the requested Assistant Attorney General authorization is declined, we will promptly notify the Court.

Thank you for your consideration of this matter.

Respectfully submitted,

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Encl.

cc: all counsel (by ECF)

The deadline for the United States to submit supplemental briefing is adjourned to **May 31, 2019**. The deadline for the State of New York to submit supplemental briefing is adjourned to the same date, but the State should file a letter confirming receipt of the Court's order no later than **May 6, 2019**.

The Clerk of Court is respectfully directed to mail a copy of this order to the New York State Office of the Attorney General, at the addresses noted in Dkt. 31.

SO ORDERED.



HON. VALERIE CAPRONI  
UNITED STATES DISTRICT JUDGE  
4/26/2019